IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13816 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHAPURA TRANSPORT COMPANY

Versus

ASSTT. PROVIDENT FUND COMMISSIONER

Appearance:

1. Special Civil Application No. 13816 of 2003

MR KV GADHIA for Petitioner No. 1

MR MS RAO for Respondent No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 12/12/2003

ORAL JUDGEMENT

Rule was issued in this matter on 22.9.2003.

Mr.B.T. Rao, the learned advocate appears for the Provident Fund authorities. It is interesting to note that the officer concerned, i.e. Assistant Provident Fund Commissioner has taken a supertechnical view in the matter. By order dated 4.2.2003 a direction was issued to the effect that,

> "Taking into consideration the aforesaid contention and reserving the right of the authorities to pass an order after affording an opportunity to the petitioner on condition that the petitioner shall deposit the amount ordered, within four weeks from the date of receipt of this order, the aforesaid two orders are hereby quashed and set aside. The authorities are directed to pass a fresh order after affording sufficient opportunity and permitting the petitioner to lead evidence within eight weeks after the deposit made by the petitioner. It is clarified that the deposit made by the petitioner will be subject to the orders passed afresh." (emphasis supplied)

2. Mr.Vaishnav, the learned advocate for K.V. Gadhia appearing for the petitioner submitted that after the aforesaid order was passed by this Court on 4.2.2003 the amount was deposited on 20.3.2003 and thereafter, hearing under section 7A was fixed on 7.4.2003. On 7.4.2003 the learned advocate for the petitioner company has filed appearance and remained present before the authorities. On that day the matter was adjourned to 5.5.2003. On 5.5.2003 a written representation was made by the petitioner company, but the same was not accepted as the officer was not available and the matter was again adjourned to 26.5.2003. On 26.5.2003 also the matter was not heard and it was adjourned to 25.6.2003. On 25.6.2003 again the officer was not available and the matter was adjourned to 30.6.2003. On 30.6.2003 the respondent authorities have passed an order, a copy of which is at Annexure 'C' to the petition, wherein it is stated that,

> "The High Court has also directed the authority to pass a fresh order after affording sufficient opportunity and permitting the establishment to lead evidence within 8 weeks after deposit is made."

Only on account of the period of eight weeks having expired the authorities have refused to interfere with the matter, stating that unless further directions are

issued in the matter, it cannot be entertained by the authorities.

3. The approach taken by the officer is too technical, but then without commenting on the same the order dated 30.6.2003 is quashed to the extent it states that, "Accordingly case is decided." and the officer is directed to hear the matter again and pass fresh orders within eight weeks from the date of the receipt of this order. The present petition is allowed. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)

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